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FILE NO: 50289.000055

November 20, 2001

**Via Telecopier and Electronic Mail**

James L. Connaughton  
Chairman  
Council on Environmental Quality  
Executive Office of the President  
17<sup>th</sup> and G Streets, N.W.  
Washington, D.C. 20503

**Re: InterGen Transmission Line Project**

Dear Mr. Chairman:

This letter is submitted on behalf of InterGen, B.V., in response to the public notice published by the Council on Environmental Quality ("CEQ") in the Federal Register on August 20, 2001. That notice announced the establishment of a federal interagency task force (the "Task Force") to oversee the efforts of federal agencies to expedite their review of permit applications for energy-related projects, and requested information about major pending projects that may be relevant to the Task Force's efforts to streamline energy permitting decisions.

**A. Project Description**

InterGen, through its affiliate Baja California Power, Inc. ("BCP"), is proposing to construct and operate a new double-circuit 230 kV transmission line to connect new gas-fired electric generating facilities being constructed in Mexico to the electric power grid in southern California for the purpose of importing power to the United States. The proposed transmission line would extend south from the Imperial Valley substation owned and operated by San Diego Gas and Electric Company ("SDG&E") in El Centro, California, six miles to the U.S.-Mexico border and then six miles further south to the generating facilities in Mexicali, Baja California, Mexico, that will supply power to BCP.<sup>1</sup>

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<sup>1</sup> Sempra Energy Resources ("SER") is proposing to construct a similar 230 kV transmission line between the Imperial Valley Substation and new generating facilities under construction by SER in Mexico. The proposed transmission lines would run parallel to one another within the existing utility corridor. These projects therefore are being considered together in a single Environmental Assessment for purposes of compliance with the  
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The natural gas to fuel the new electric generating facilities will be provided by a new pipeline system extending from an existing El Paso Natural Gas Company pipeline in Ehrenberg, Arizona in the U.S. to an existing pipeline in Baja California, Mexico, crossing the international border at Algodones, Mexico. The Mexican portion of the pipeline is under construction. The U.S. portion of the pipeline is a proposal by North Baja Pipeline, LLC, ("NBP") a wholly owned subsidiary of PG&E Gas Transmission Holdings Corporation. The NBP project is being permitted separately from the BCP transmission line.

**B. Permit Requirements and Status of Permitting Actions**

**1. Federal Agencies**

**a. U.S. Department of Energy**

**Requirement:** A Presidential permit must be issued by the U.S. Department of Energy ("DOE") to connect the proposed transmission line across the international border between the United States and Mexico. See Executive Orders No. 10485 and 12038; 10 C.F.R. § 205.320 et seq. DOE's decision must consider whether or not the action is consistent with the public interest, including consideration of environmental and electric reliability issues.

**Status:** BCP filed an application for a Presidential permit with DOE on February 27, 2001. DOE is the lead agency for preparation of an Environmental Assessment ("EA") in compliance with the requirements of the National Environmental Policy Act ("NEPA"). DOE issued a draft EA on September 18, 2001. DOE is in the process of preparing responses to comments received on the draft EA and expects to issue a final EA within the next few days. (The Department of State and the Department of Defense already have issued the required concurrences for the permit.) The DOE official primarily responsible for this permitting action is Tony Como in the Office of Fossil Energy (202-586-5935).

**b. Bureau of Land Management**

**Requirement:** The portion of the proposed transmission line within the United States would extend across land owned and administered by the Bureau of Land Management ("BLM")

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National Environmental Policy Act. The projects are not commercially related and are the subject of separate permitting actions. The information provided in this letter relates specifically to the BCP project.



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within the Department of Interior. The construction of the line therefore requires the grant of a right-of-way ("ROW") from BLM for the use of BLM land. See 43 C.F.R. 2800.

Status: BCP submitted an application for the ROW to BLM on February 26, 2001. BLM is a cooperating agency with DOE in the preparation of the EA. The permit application originally was being processed by BLM's El Centro Field Office. The Office of the Director of BLM recently assumed responsibility for review of this application, and InterGen understands that the final decision on the application will be made by the Secretary of the Interior. At a meeting on November 15, 2001, BLM officials indicated that they needed to review the final EA and response to comments being prepared by DOE, and that they expected that this review process could be completed within one to two weeks after they receive the final EA. At present, the BLM official primarily responsible for the ROW application is Ray Brady (202- 452-7773).

c. International Boundary and Water Commission (IBWC)

Requirement: The mission of the IBWC is to apply the rights and obligations which the Governments of the United States and Mexico assume under the numerous boundary and water treaties and related agreements, and to do so in a way that benefits the social and economic welfare of the peoples on the two sides of the boundary and improves relations between the two countries. IBWC has review authority over actions that may affect the international border area.

Status: The IBWC issued a letter on November 15, 2001, stating that its concerns regarding the construction of the transmission line have been addressed. The only remaining issue for the IBWC is water quality, which will be addressed in the final EA.

d. U.S. Army Corps of Engineers (USACE)

Requirement: Current project plans call for the placement of steel lattice towers in non-wetland waters of the United States under the jurisdiction of the USACE. A permit will be required from the USACE to allow this work under Section 404 of the Clean Water Act. Processing of the Section 404 permit will require certification by the Regional Water Quality Control Board under Section 401 of the Clean Water Act.

Status: BCP has filed an application for certification by the California Regional Water Quality Control Board ("RWQCB") and the application has been accepted as complete. The RWQCB needs an approved environmental document (a final EA or a FONSI) to finalize its certification. Once the water quality certification is issued, the USACE will take final action on the Section 404 permit.



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2. State Agencies

a. State Historic Preservation Office (SHPO)

Requirement: The SHPO consults with appropriate Federal agencies in accordance with the National Historic Preservation Act (NHPA) on Federal undertakings that may affect historical properties, and the content and sufficiency of any plans developed to protect, manage, or reduce or mitigate harm to such properties.

Status: Although DOE is the federal lead agency for NEPA purposes, BLM, as the "on-site" agency, has coordinated both the BLM and DOE responsibilities under the National Historic Preservation Act. BLM has consulted with SHPO on the project, particularly with respect to four archeological sites that were a potential concern. In accordance with SHPO's direction, additional survey work has been conducted.

b. California Public Utilities Commission (CPUC)

Requirement: The segment of an existing SDG&E 230 kV transmission line that is presently on wooden poles near the Imperial Valley Substation will be relocated and placed on steel monopoles in order to provide clearance for the BCP transmission line to pass under the 500 kV Southwest Power Link. A modification of the Certificate of Public Convenience and Necessity ("CPNC") must be obtained from the CPUC to allow the relocation.

Status: The CPUC has indicated that they intend to use the EA as a California Environmental Quality Act (CEQA) document, provided all CEQA-related requirements are satisfied. Upon receipt of an approved environmental document (final EA or FONSI), the CPUC will move to consider the modification of the CPCN at the following commission meeting.

C. **Potential Issues for Task Force Consideration**

The generating facilities in Mexico that will supply power to BCP are scheduled to commence commercial operation by the summer of 2002. If the required permits and governmental authorizations can be obtained in time, BCP intends to complete construction of the new transmission line by that same time, and thereby to be able to supply power to California during next summer's period of peak electrical demand. However, time is becoming critically short to meet this schedule. First, from the perspective of environmental protection, the optimal period for construction of the transmission line is during the dormant period of the desert flat-tailed lizard. The dormant period runs from mid-November until late February or early March, and thus already has started. Every week of delay in commencing construction increases the likelihood that construction will not be completed before the end of the dormant



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period. Second, the financial viability of accelerating construction of the Mexico generating facilities to commence commercial operation next summer depends on the ability to sell power into California during the summer peak season. If construction of the transmission line cannot begin in the very near future, it will not be possible to have the power on line to California in time for the 2002 summer peak season.

Comments on the draft EA, particularly those submitted by the U.S. Environmental Protection Agency ("EPA"), raise certain issues concerning the scope of the NEPA review for the BCP project that may be of particular relevance to CEQ. In particular, EPA (and others) have suggested that BCP's proposed transmission line and NBP's proposed natural gas pipeline (currently under consideration by the Federal Energy Regulatory Commission ("FERC")) that would supply fuel to the BCP generating facilities in Mexico are "connected actions" that should be considered together in a single NEPA document. FERC is preparing a separate Environmental Impact Statement for the pipeline, and has concluded that the pipeline and the transmission line are not connected actions.<sup>2</sup> In particular, neither project depends on the other for its commercial or financial viability. Nonetheless, it appears that this issue may be a source of further concern on the part of BLM and other interested parties. Given CEQ's responsibility for interpreting and overseeing federal agency implementation of the requirements under NEPA, the Task Force appears to be uniquely qualified to facilitate the resolution of any inter-agency difference regarding the scope of the NEPA review for the BCP project.

InterGen appreciates the opportunity to apprise the Task Force of the permitting status of the BCP transmission project and welcomes any assistance the Task Force can provide in expediting these permitting actions. Please contact me at (202) 955-1576 if you have any questions or if I can provide any additional information.

Sincerely,

A handwritten signature in dark ink, appearing to read "Eric J. Murdock".

Eric J. Murdock  
Counsel for InterGen, B.V.

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<sup>2</sup> NBP has applied to FERC for a Certificate of Public Convenience and Necessity, pursuant to the Natural Gas Act, to construct and operate a new interstate pipeline and ancillary facilities [Docket No. CP-01-22-000], and for a Presidential Permit to construct and operate facilities at the international border for the exportation of Natural Gas [Docket No. CP-01-23-000]. FERC issued the Draft Environmental Impact Statement/Environmental Impact Report and Draft Land Use Plan Amendment for the North Baja Pipeline Project (FERC/EIS-0132D) in July 2001.



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